



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

No. CR 87-422-ER

Plaintiff,

v.

RAFAEL CARO-QUINTERO, et al.

Defendants.

ORDER DENYING
DEFENDANT BERNABE-RAMIREZ'
MOTION TO COUNTS 4 AND 5 AS
BARRED BY THE STATUTE OF
LIMITATIONS

On April 2, 1990, defendant Bernabe-Ramirez' motion to dismiss count 4 and 5 as barred by the statute of limitations came on for hearing before this Court, the Honorable Edward Rafeedie presiding. Having read and considered the pleadings filed in this matter, and having considered the oral argument presented at the hearing, IT IS HEREBY ORDERED that this motion is denied.

The statute of limitations begins to run when the crime is complete. Tousie v. United States, 397 U.S. 112, 115 (1970). "A crime is complete when each element of the crime has occurred."

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1 United States v. Smith, 740 F.2d 734 (9th Cir. 1984). Bernabe
2 has been charged with violent acts to gain admission to or
3 further his role in a racketeering enterprise. This crime was
4 not complete until the violent act occurred. Therefore, counts 4
5 and 5 are not barred by the statute of limitations.

6 Further, to the extent that the government must prove the
7 existence of an enterprise engaged in racketeering activity, this
8 requirement is similar to that under RICO that the government
9 prove that defendant engaged in a "pattern of racketeering
10 activity." Under RICO, the two or more racketeering acts need
11 not all have occurred within the 5 year statute of limitations
12 provided one of the racketeering acts occurred within the 5 year
13 period. See e.g., United States v. Pepe, 747 F.2d 632, 663n.55
14 (11th Cir. 1984). By analogy, the government's attempt to
15 establish the existence of an enterprise engaged in racketeering
16 activity by proving acts both before and after the statute of
17 limitations cut-off date, does not render counts 4 and 5 time
18 barred.

19 Accordingly, defendant's motion is denied.

20 IT IS SO ORDERED.

21 IT IS FURTHER ORDERED that the Clerk of the Court shall
22 serve, by United States mail, copies of this Order on counsel for
23 the parties in this matter.

24 Dated: April 11, 1990

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26 EDWARD RAFEEDIE
27 United States District Judge
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